

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP

A NEW YORK LIMITED LIABILITY PARTNERSHIP

901 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005-2327

425 PARK AVENUE
NEW YORK, NY 10022-3598
(212) 836-8000
FAX (212) 836-8689

(202) 682-3500
FAX (202) 682-3580

NINE QUEEN'S ROAD CENTRAL
HONG KONG
852-2845-8989
FAX 852-2845-3682

WRITER'S DIRECT DIAL NUMBER

1999 AVENUE OF THE STARS
LOS ANGELES, CA 90067-6048
(310) 788-1000
FAX (310) 788-1200

August 7, 1997

RECEIVED

AUG - 7 1997

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 97-138
Comments of Malrite Communications Group, Inc.

Dear Mr. Caton:

On behalf of Malrite Communications Group, Inc., there is transmitted herewith and filed an original and four (4) copies of its "Comments" regarding the Commission's Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations.

Should there be any questions concerning the attached Comments, kindly communicate directly with the undersigned counsel.

Very truly yours,

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER, LLP

By: 

Bruce A. Eisen

Enclosure

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

RECEIVED

AUG - 7 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Review of the Commission's Rules) MM Docket No. 97-138
Regarding the Main Studio and)
Local Public Inspection Files)
of Broadcast Television and)
Radio Stations)

TO: The Commission

COMMENTS OF
MALRITE COMMUNICATIONS GROUP, INC.

Malrite Communications Group, Inc. ("Malrite"), by its attorneys, hereby files its comments with regard to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 97-182, released May 28, 1997. In support thereof, the following is shown:

1. Malrite is the licensee of a number of television broadcast stations operating in markets within the United States and Puerto Rico. These stations include WXIX-TV, Newport, Kentucky; WFLX-TV, West Palm Beach, Florida; WOIO-TV, Shaker Heights, Ohio; and WNWO-TV, Toledo, Ohio. Malrite also controls the licensee of Station WLII-TV, Caguas, Puerto Rico.
2. Malrite supports the Commission's liberalization of its rules regarding main studio location. It also endorses

modifications to the Commission's rules concerning public file location and content.

I. Main Studio Location

3. Malrite agrees with the Commission's conclusion that the current rules governing main studio location are in need of revision because they impose unnecessary restrictions on radio and television broadcasters. In the NPRM, the Commission identifies a goal of maximum interaction between licensees and their local communities. In most cases, of course, a television station's Grade A contour goes far beyond its community of license. Indeed, television stations typically serve much larger areas than radio stations, involve considerably greater capital investments, and require larger audiences to attract more advertising revenues. Hence, the Commission and the courts have traditionally defined television service areas in terms of coverage, and not in terms of artificial political boundaries. See, Evening Star Broadcasting Company, 27 FCC 2d 316, 321 n.4, aff'd sub nom. Stone v. FCC, 466 F2d 316 (D.C. Cir. 1972).

4. While it is certainly true that a television station licensee must maintain its commitment to a community of license, nevertheless, the expanse of a licensee's service area is such that a studio location may be far more accessible to its service

area, although located at a distance from the community of license. Malrite urges the Commission to adopt a rule which extends the permitted location of the main broadcast studio for television stations to any location within the relevant Grade A contour of any television station licensed to the same community. The specification of the contour rather than an arbitrary mileage restriction is sensible because sizes, shapes and terrain factors vary considerably from DMA to DMA. However, we also believe that a television station should have the option of locating its main studio within a radius of 35-miles from a common reference point in the station's community of license.

5. These modifications would liberalize the Commission's current policy, but in keeping with the technical realities of television transmission would not compromise the accessibility of the studios to station viewers. In addition, by allowing stations to locate within a broader geographic range, the Commission would improve the accessibility of the studio to the total population that receives the television signal instead of narrowly limiting the measure of accessibility to that of the station's community of license, or even those that reside within the Grade A contour. It is not the definition of "community of license" that is dispositive. More important is whether a

station is responsive to the needs and interests of its service area, i.e., the population that views the television station.

6. In Malrite's experience, its television facilities will be easily accessible to the viewing public. The following shows the relationship between community of license and main studio of several Malrite stations.

<u>Station</u>	<u>Community of License</u>	<u>Studio Location</u>	<u>Access</u>
WXIX-TV	Newport, KY	Cincinnati, OH	FCC authorized studio is 2 miles from nearest boundary of Newport. There is public transportation between Newport and Cincinnati. The communities are connected by State and Federal byways, and there is ample parking facilities at the studio.
WOIO-TV	Shaker Heights, OH	Cleveland, OH	FCC authorized studio is 5.4 miles from nearest boundary of Shaker Heights. The communities are connected by public transportation (rapid transit and bus). If driving, there is a direct route via city surface streets between studio and Shaker Heights. There is ample public parking near studio.

WLII-TV	Caguas,	San Juan,	FCC authorized studio is
	PR	PR	approximately 30 miles
			from the nearest edge of
			Caguas. There is public
			transportation (Metro bus
			and Publico service -
			independent van) between
			Caguas and San Juan. If
			driving, there are two
			routes, one via the
			highway and one via the
			Old Caguas Route which
			was the main road before
			the highway was built.
			There is parking on the
			street.

II. Location of Public Inspection File

7. Malrite agrees with the Commission that the preferred and most rational location for a local public inspection file is at a broadcast station's main studio location. Indeed, once the Commission determines what rule should apply to the location of a main studio, it should then require the files to be maintained at that main studio. The current rule that the files must be placed in the community of license makes little sense, especially when it is measured in light of the already more liberal requirement for main studio locations. Furthermore, experience shows that the most concentrated viewing population may not reside within a particular community of license, but rather at points closer to

the studio. Requiring the file to be placed at the main studio may, therefore, be more convenient to the public.

8. Knowing the location of a station's main studio is the easiest way for a television viewer to ascertain where he or she can uncover information regarding the station. Ordinarily, a television studio is a site well advertised in telephone directories, by signage and by the television station, itself. The studio is staffed by professionals who can answer questions raised by the public and who are responsible for and knowledgeable about maintaining the contents of the public file.

9. The NPRM outlines the proposals of several petitioners. Salem Communications Corp. urges the Commission to require any licensee who elects to place its public file at a main studio outside its community of license to also accommodate the public by providing free transportation to the main studio, or delivering the public file to a location specified by the requestor, or providing specific documents by mail to the requestor. This, we believe, is far too burdensome to justify the perceived benefits. Salem's proposal creates a new level of regulations in disregard of a television licensee's coverage. Not only is the proposal cumbersome, but it could also discourage television broadcasters from locating their studio or public

inspection files anywhere but within their particular communities of license. Furthermore, the present rules provide a mechanism that allows the public full access to station records. Hence, Section 73.3526(f) of the Rules covers such matters as machine reproduction upon request, and the manner and time period in which such documents must be provided. Salem does not contend that the rule is failing the public, so there is no reasonable basis for change.

10. Malrite supports the proposal to delete the present requirement that a new licensee maintain in the station's public file all documents previously required to be maintained in the file by the assignor of the license. Malrite also supports those provisions in the NPRM regarding the deletion of the requirement to retain "The Public and Broadcasting" in the public file.

11. Malrite believes that the Commission also has an opportunity to change for the better the amount of materials that must be kept in the public file for periods that now appear outdated. The retention periods set forth in Section 73.3526(e) of the Commission's Rules include some reasonable time limitations. For instance, the political file materials which must be kept in a separate file and retained for two years, is not burdensome and, indeed, probably helps broadcasters to

achieve continuity and effective documentation in case of a subsequent complaint. So, too, the retention periods for various applications is acceptable. However, a number of items must be kept in the public file for periods of time that seem to have little nexus to proper regulation or public involvement. In Malrite's experience, a three year period for the retention of letters from the public is excessive. Rarely, if ever, are these materials examined by the public. Moreover, where letters properly raise questions that management believes to be of importance, such letters are acted upon swiftly. Otherwise, there is no legitimate basis for retaining the letters, and two years of retention would be more than adequate.

12. The issues/program lists are, of course, extremely important to a television licensee's continuing ascertainment of community problems and needs. However, a two year retention period is surely more than enough time to retain such lists in the absence of an ongoing investigation into a station's obligation to broadcast in the public interest. The present need to retain the issues/program lists for the entire term of a license wastes an enormous amount of file space, a matter which is of significant consequence to any business. Similarly, the present requirement to retain documentation of a station's

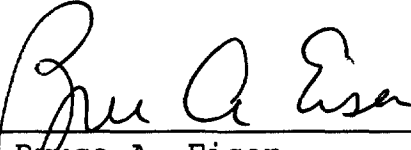
performance under the Children's Television Act of 1990 seems inordinate. Two years is long enough to give the Commission or any member of the public ample time to question children's programming, and any item under review can be retained until the matter is closed. As with the issues/program lists, compliance with the present retention period absorbs a great amount of file space.

13. Malrite submits that record keeping should be streamlined so that the licensee must retain only what is absolutely necessary. The amount of space that now represents a typical television station public file has become overly burdensome. Because of these considerations, it would be reasonable to allow a licensee to keep materials relevant to the license term, but which are more than two years old, at a storage location rather than at the main studio. Such an "inactive" file could be relied upon by the broadcaster and the Commission if necessary, but would not have to be made routinely available to the public because of its age. This would result in a fair balance between the operational needs of the licensee and the Commission's ability to review, if necessary, documents which span the entire license term.

In light of the foregoing, Malrite requests the Commission to carefully consider these comments and to adopt them in its Report and Order.

Respectfully submitted,

MALRITE COMMUNICATIONS GROUP, INC.

By: 
Bruce A. Eisen
Its Attorney

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER, LLP
901 15th Street, N.W.
Suite 1100
Washington, D.C. 20005

August 7, 1997

CERTIFICATE OF SERVICE

I, Toni R. Daluge, a secretary in the law firm of Kaye, Scholer, Fierman, Hays & Handler, LLP, hereby certify that on this 7th day of August, 1997, a copy of the foregoing "Comments of Malrite Communications Group, Inc." was hand-delivered to the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Victoria M. McCauley, Esq.
Policy & Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 547
Washington, D.C. 20554


Toni R. Daluge